

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
File No. 5:09-CV-321-H**

OSCAR ALBRITTON,

Plaintiff,

v.

SESSOMS & ROGERS, P.A., RICHARD J.
DE GIACOMO, JR., and NORTH STAR
CAPITAL ACQUISITIONS, LLC,

Defendants.

**DEFENDANTS' MOTION TO DISMISS,
PURSUANT TO F.R.C.P. 12(b)(6)**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendants Sessoms & Rogers, P.A., Richard J. De Giacomo, Jr., and North Star Capital Acquisitions, LLC move this Court to dismiss with prejudice all claims in Plaintiff Oscar Albritton's Amended Complaint (Docket no. 16) for failure to state a claim upon which relief can be granted. In support of this Motion, Defendants state:

1. Plaintiff's claims, brought under the federal Fair Debt Collection Practices Act ("FDCPA" or the "Act"), 14 U.S.C. §§ 1692 *et seq.*, arise from documents attached to the Amended Complaint, including an Affidavit and a Statement of Account, which were used in a state-court debt collection lawsuit against Albritton in Defendants' lawful effort to collect a debt.

2. As set forth in detail in Defendants' Memorandum of Law in support of this Motion, the accuracy of these documents is undisputed in the Amended Complaint. Rather, the Amended Complaint engages in hyper-technical readings of the documents, and attempts to

forge an implausible link between the Affidavit and Statement of Account, a link which Plaintiff then claims renders the documents false, deceptive, or misleading.

3. The documents themselves contradict such a link, and the allegations of the Amended Complaint fail to show any violation of the FDCPA. Thus Plaintiff's Amended Complaint makes clear on its face that all of Plaintiff's claims continue to fail as a matter of law, and the Amended Complaint should therefore be dismissed with prejudice.

WHEREFORE, Defendants Sessoms & Rogers, P.A., Richard J. De Giacomo, Jr., and North Star Capital Acquisitions, LLC respectfully request the Court enter an Order dismissing this case with prejudice pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and awarding Defendants such other and further relief as the Court deems just and proper.

Dated: October 2, 2009

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing **Defendants' Motion to Dismiss** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Angela Orso Martin, Esq.
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Dated: October 2, 2009

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